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ALEXANDER L. STEVAS,
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No. 80-965

IN THE

United States Supreme Court

OCTOBER TERM, 1980

TEXACO, INC., ROBERT BRASELTON, ELECTRA FIELDS, CHARLES BRASELTON, CHESTER BRASELTON, ROBERT E. BRASELTON, CLIFFORD N. BRASELTON, OSBORNE T. BRASELTON, JR., DAVID E. BURKHART, JOHN P. BRASELTON, ROSA G. BURKHART, D. W. MAYHEW, d/b/a MAYHEW OIL AND GAS DEVELOPMENT,

Appellants,

vs.

LOUISE F. SHORT,

Appellee,

STATE OF INDIANA,

Intervenor.

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

JOHN L. CARROLL
JOHNSON, CARROLL & GRIFFITH
2230 West Franklin Street
P.O. Box 6016, Station B
Evansville, Indiana 47712
Telephone: (812) 425-4466
Attorneys for Appellants

Unigraphic, Inc., 1401 N. Fares Ave., Evansville, Ind. 47711. Phone 424-3680

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BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

The thrust of Appellee's Motion to Dismiss or Affirm is that there is no substantial federal question. In support thereof, Appellee cites no cases on that issue. On the contrary, Appellee seems to say there is no federal (i.e. constitutional) question because:

1. There is a valid policy reason for the enactment of the Act.

2. The Act is similar to the marketable title statutes, statutes of limitation or recording acts.

3. The Act is "self-executing", therefore, questions of procedural due process do not arise.

Whether or not there is a valid policy reason for The Act does not affect its constitutionality. In *Sniadach v. Family Finance Corporation of Bayview* (1969) 395 U.S. 337, 23 L.Ed.2d 349, 89A S.Ct. 1820, the Court held that the question is not whether the law is wise, but whether it complies with the 14th Amendment.

There is no analogy to the marketable titles act, to statutes of limitation or the recording acts of the various states.

The purpose of the marketable title acts is to protect the record title holder against stale, spurious, conflicting or doubtful claims by others who are claiming the same interest. In the case of mineral interests there is no conflict with the surface owner. Each hold separate estates recognized under the law.

Here Appellee knew of the outstanding mineral rights, since they were specifically excepted in Appellee's deed. Further, Appellee knew of the whereabouts of Appellant. Despite this knowledge, The Act permitted a forfeiture of Appellant's interest.

The owner of the mineral interest and the owner of the surface interest are each entitled to the protection of the marketable title act. *These are titles in tandem, not titles in collision.*

We are not here dealing with murky titles or long-lost owners of interests. There is no cloud on the title of Appellant except as The Act creates the cloud.

In *Contos v. Herbst* (Minn 1979) 278 NW2d 732, the Minnesota Supreme Court distinguished the marketable title act from the dormant minerals act, holding the former constitutional, the latter unconstitutional.

Recording acts are intended to protect bona fide purchasers from unknown and unrecorded claims -- certainly no parallel to the case at bar since Appellee had full record knowledge of Appellant's mineral interests.

The attempted analogy to a statute of limitations is not applicable here. As was stated in *Contos v. Herbst*, supra, and *Wilson v. Bishop* (Ill 1980) 412 NE2d 522 (both cases set out in full in Appendix H and I of the Jurisdictional Statement), statutes of limitation are procedural in nature and are not designed to alter substantive rights or convey property interests. Here, the effect of The Act is to transfer property rights from one owner to another owner, without any attempt to comply with the Due Process Clause of the Constitution.

Appellee has not addressed any of the constitutional points raised by Appellant. Although Appellee says there is no substantial federal question, a simple reading of The Act immediately raises fundamental constitutional questions of due process and fair play.

Appellee says there is no federal question here because the statute is "self-executing" and therefore does not need to comply with the 14th Amendment. Obviously to say it is "self-executing" says nothing about the constitutional issue. Procedural or substantive due process is a constitutional requirement, with or without judicial proceedings, as shown by the decision of this Court in *Sniadich v. Family Finance Corporation of Bayview*, supra.

The Court should note probably jurisdiction of this appeal.